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8 **UNITED STATES DISTRICT COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA**  
10 **SOUTHERN DIVISION**

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13 **UNITED STATES OF AMERICA,**

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15 **Plaintiff,**

16 **v.**

17 **JOSEPH MARTIN GOVEY,**

18 **Defendant.**  
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} **Case No.: SACR 17-00103-CJC**

} **ORDER GRANTING IN PART AND**  
} **DENYING IN PART MOTION IN**  
} **LIMINE TO EXCLUDE EVIDENCE**  
} **THAT (1) ANY GOVERNMENT**  
} **WITNESS IS REPRESENTED BY**  
} **COUNSEL AND (2) ANY**  
} **GOVERNMENT WITNESS HAS**  
} **PREVIOUSLY INVOKED THE FIFTH**  
} **AMENDMENT**  
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24 The Court has reviewed the Government's motion in limine seeking to exclude  
25 evidence that government witnesses are represented by counsel and that they previously  
26 invoked the Fifth Amendment. (Dkt. 57.) The Government is primarily concerned that  
27 the Defendant may mention or cross-examine Deputy Larson about the fact that he is  
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1 represented by an attorney in this case and that he previously invoked the Fifth  
2 Amendment in a state court proceeding.

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4 The motion is GRANTED IN PART and DENIED IN PART. The Court does not  
5 see the relevance of the fact that Deputy Larson is represented by counsel in this case,  
6 particularly because counsel was appointed for Deputy Larson by the Court without any  
7 request by him. Even if there is some marginal relevance, there is a substantial risk of  
8 unfair prejudice. As the Government argues, the jury may improperly infer that Deputy  
9 Larson is represented by counsel because he committed wrongdoing. The jury might also  
10 incorrectly infer that the Court appointed counsel for Deputy Larson because the Court  
11 believes that Deputy Larson engaged in wrongdoing. The risk of unfair prejudice clearly  
12 outweighs any probative value of the fact that the Court appointed an attorney to  
13 represent and advise Deputy Larson of the advantages of testifying in this case and the  
14 risks of incriminating himself.

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16 With respect to evidence that Deputy Larson previously invoked the Fifth  
17 Amendment, the Court's denies the motion and will allow this evidence at trial. As the  
18 parties are aware, this case arises out of a search of Defendant's bedroom that was  
19 conducted by deputies of the Orange County Sheriff's Department. Of the deputies  
20 involved in the search, the Government intends to call only two deputies, and Deputy  
21 Larson is one of the two. So, Deputy Larson will be one of only two key percipient  
22 witnesses who has personal knowledge of the search.

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24 Deputy Larson will also be an important witness for Defendant. Defendant's  
25 theory of the case is that this case was brought against him because certain Orange  
26 County Sheriff's Department deputies, including Deputy Larson, seek revenge against  
27 Defendant. Defendant claims that these deputies have a history of engaging in  
28 misconduct, including by unlawfully using inmate informants against Defendant and

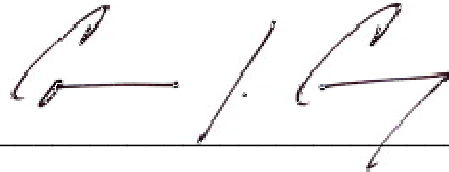
1 other inmates. According to Defendant, this inmate informant scandal caused the District  
2 Attorney's office to dismiss a 2012 attempted murder case against Defendant.  
3 Apparently, Defendant's theory is that since the 2012 charges against him were dropped,  
4 Orange County deputies feel they have a score to settle with Defendant and a motive to  
5 overstate the evidence in this case. Defendant intends to cross-examine Deputy Larson  
6 about the informant scandal to prove up his theory.

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8 Because Deputy Larson will be such a key witness for both parties, whether the  
9 jury believes Deputy Larson or not may well be determinative in this case. It is therefore  
10 critical that the jury have before it all relevant impeachment evidence bearing on Deputy  
11 Larson's motive, bias, and character for truthfulness. In fact, Defendant has a  
12 constitutional right to confront and impeach Deputy Larson about his testimony. *Davis v.*  
13 *Alaska*, 415 U.S. 308, 315–16 (1974) (“The Sixth Amendment to the Constitution  
14 guarantees the right of an accused in a criminal prosecution to be confronted with the  
15 witnesses against him. . . . The main and essential purpose of confrontation is to secure  
16 for the opponent the opportunity of cross-examination.”)

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18 Here, it is expected that Defendant will exercise his constitutional right to cross-  
19 examine Deputy Larson about his involvement in the inmate informant scandal and the  
20 truthfulness of his testimony regarding that scandal in a prior state court proceeding.  
21 When Deputy Larson was asked about these very same topics at a prior state court  
22 proceeding for a murder case, Deputy Larson refused to testify and invoked the Fifth  
23 Amendment. If, as the Government has represented, Deputy Larson decides to testify  
24 about the scandal in this case, Defendant has a right to question Deputy Larson about his  
25 inconsistent decisions not to testify about the scandal in one instance and to testify about  
26 it in another. The inconsistency is significant because it raises doubts about his  
27 truthfulness and lends credence to the Defendant's theory that Deputy Larson has a bias  
28 and vindictive motive to testify against him.

1 Finally, the evidence that Deputy Larson invoked the Fifth Amendment is not  
2 unfairly prejudicial. It is not confusing or likely to mislead the jury, as both parties will  
3 have an opportunity to question Deputy Larson about the circumstances under which he  
4 previously invoked the Fifth Amendment.

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7 DATED: January 17, 2018

A handwritten signature in dark ink, appearing to read 'C. J. Carney', written over a horizontal line.

9 CORMAC J. CARNEY  
10 UNITED STATES DISTRICT JUDGE  
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